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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,605	06/06/2002	Anthony Khouri	20010300.ORI	9714
7590	06/18/2004		EXAMINER	
Todd A. Rathe FOLEY & LARDNER 777 East Wisconsin Ave Suite 3800 Milwaukee, WI 53202-5306			SOOHOO, TONY GLEN	
			ART UNIT	PAPER NUMBER
			1723	
			DATE MAILED: 06/18/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/049,605	KHOURI ET AL.
	Examiner	Art Unit
	Tony G Soohoo	1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 4-5-04.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-20,89-91 and 93-141 is/are allowed.
- 6) Claim(s) 1-20,89-91 and 93-141 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7-18-02-two sheets
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

Election/Restrictions

1. Applicant's election without traverse of the election to the invention of group I, a concrete mixing drum in the reply filed on 04/052004 is acknowledged.
2. Applicant has cancelled claims directed to a method of making a molded drum and has presented additional new claims to a mixing drum.
3. Pending claims are 1-20, 89-91, 93-141.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7, 11-16, 19-20, 90-91, 93, 96-119, 121-141 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mintoak pty ltd, WO 97/32702 (WO' 702), cited as an X reference in the international search report.

The WO '702 discloses a mixing drum with an inner spiral whereby the entire surface of the steel mixing barrel is coated with an polyurethane coating. It also discloses a concrete mixing barrel which is formed of composite plastics and includes a wear resistant polyurethane internal coating. The screw helix is formed in sections and may be bonded to the barrel surface by laminations of fiberglass reinforced material applied thereon forming and integral attachment. An alternate assembly can be bolted into place forming a detachable attachment.

See, page 4, lines 13-20; page 7, lines 2-13; page 10, line 8 through page 12, line 28; page 21, line 10 through page 22 , line 16, and the claims.

Claim Rejections - 35 USC § 103

6. Claims 17 and 89 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over by Mintoak pty ltd, WO 97/32702 (WO' 702), cited as an X reference in the international search report.

With regards to claims 17 and 89, it is noted that plastic and steel are generally different colors and thus the layers would inherently satisfy being different in color and thus may perform as a wear indicator. However, in argument, whereby it is old and well known to color plastic material, it is deemed that it would have been obvious to one of ordinary skill in the art to color the plastic material to a color different than that of the color of steel such that the interior of the drum is more aesthetically pleasing. Thus, it is deemed that it would have been inherent that such a modification would additionally cause an effect of showing wear upon the inner plastic layer onto the outer steel drum shell.

7. Claims 8-10, and 94-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Mintoak pty ltd, WO 97/32702 (WO' 702), cited as an X reference in the international search report.

8. The WO '702 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the particular thicknesses and

pitches as recited in the claim(s). Whereas the reference discloses all of the recited subject matter including walls having a thickness and helical pitch except the particular numerical value to be used in the invention, and whereby it is a well known fact that wall thickness is an effective variable in strength and contrasting weight, and whereby helical pitch is a well known effective variable in the amount of throughput produced by the helical rotation, it is deemed that it would have been obvious to one of ordinary skill in the art to without undue experimentation to determine an appropriate wall thickness and pitch range values so that the drum is strong and lightweight and provides an effective throughput and mixing.

Double Patenting

9. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

10. Applicant is advised that should claim 17 be found allowable, claim 89 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is

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proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

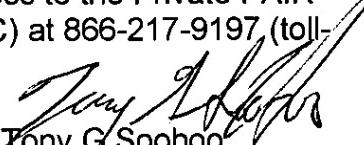
Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose examples of plastic uses in the construction of mixing drums: DE 4010539, Backman et al 5839824, Whiteman, Jr 4877327, Stevenson 3592448, and 3717328, Retzlaff 3144242, Halsted 5492401.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo
Primary Examiner
Art Unit 1723
